

FOIA Requests for Confidential Business Information (CBI) Program Office Responsibilities

- A. Send initial denial letter to the FOIA requester explaining that the information has been claimed as CBI and that EPA is making a final determination regarding whether the information is entitled to confidential treatment. Program offices are also encouraged to contact the FOIA requester directly (by phone or email) to ask if the requester is willing to narrow the scope of their request to exclude the CBI.
- B. If the FOIA request was made by a commercial requester, provide a program cost estimate for completing the CBI determination to OGC or ORC, who will require the FOIA requester to provide a written assurance of payment.
- C. Promptly send out a letter to the submitter business asking them to confirm their CBI claims for the information and to substantiate any claim of confidentiality (request for substantiation). Use OMB-approved substantiation form letter.
- D. Draft a written recommendation for OGC or ORC* explaining why the specific information claimed as CBI is or is not CBI after receiving the submitter business' response to the request for substantiation (substantiation letter). The recommendation should be detailed and be based on information provided by the submitter business in their substantiation letter. The recommendation should include any other helpful information available to the program office, such as:
 - how EPA obtained the information;
 - internet sites;
 - specialized databases;
 - trade publications;
 - patents; and
 - waivers of CBI claims by the submitter business.

The program recommendation should also consider whether the information is already in the public domain.

- E. Provide OGC or ORC with a:
 - 1. Copy of the request for substantiation;
 - 2. Copy of the substantiation letter;
 - 3. Copy of the program office's written recommendation;
 - 4. Copy of any additional correspondence from the submitter business;
 - 5. Name, phone number and email address of EPA program person(s) most familiar with the information at issue;
 - 6. Copy of FOIA request and appeal (if there is one);
 - 7. Copy of the information claimed as CBI.

* OGC is responsible for making the final CBI determinations for all Headquarters CBI requests and for only the regional CBI requests involving FIFRA and TSCA. All other CBI determinations are made by the applicable ORC.